



THE EFFECT OF MARRIAGE DISPENSATION ON THE PREVALENCE OF EARLY MARRIAGE IN BOLA SUB-DISTRICT, WAJO DISTRICT

*PENGARUH DISPENSASI NIKAH TERHADAP MARAKNYA
PERNIKAHAN DINI DI KECAMATAN BOLA,
KABUPATEN WAJO*

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ABSTRACT

This study aims to determine the effect of marriage dispensation on the rise of early marriage in Bola District, Wajo Regency, which is the problem in this study related to the phenomenon and influence of marriage dispensation on the rise of early marriage. This research is a qualitative study using informants or sources with data collection methods of observation, interviews and documentation, and analyzed descriptively qualitative. Based on the formulation of the problem which consists of two, next: 1. Underage marriage for now is still a lot, especially in Bola District. Early marriage from the last 2 years, according to data obtained from the Bola District Religious Affairs Office, has always increased, in 2021 out of 65 couples who got married, 35 were registered to take the marriage dispensation route, in 2022 there were 45 out of 70 couples who got married. 2. Marriage dispensation has an influence on the rise of early marriage because marriage dispensation provides permission to marry someone under the legally established age of marriage, which can make parents or guardians feel that they have legal legitimacy to marry their children even though they are still under the recommended age.

Keywords: marriage dispensation, early marriage, marriage law

ABSTRAK

Penelitian ini bertujuan untuk mengetahui Pengaruh dispensasi nikah terhadap maraknya pernikahan dini di Kecamatan Bola, Kabupaten Wajo yang menjadi permasalahan dalam penelitian ini terkait fenomena dan pengaruh dispensasi nikah terhadap maraknya pernikahan dini. Penelitian

ini merupakan penelitian kualitatif dengan menggunakan informan atau narasumber dengan metode pengumpulan data observasi, wawancara dan dokumentasi, serta dianalisis secara deskriptif kualitatif. Berdasarkan dari rumusan masalah yang terdiri dari dua, berikutnya: 1. Pernikahan dibawah umur untuk saat ini memang masih banyak terkhusus di Kecamatan Bola. Pernikahan dini dari 2 tahun terakhir ini menurut data yang didapatkan dari Kantor Urusan Agama Kecamatan Bola selalu mengalami peningkatan, di Tahun 2021 dari 65 pasangan yang menikah diantaranya ada 35 orang yang terdaftar menempuh jalur dispensasi nikah, di tahun 2022 sebanyak 45 orang dari 70 pasangan yang menikah. 2. Dispensasi nikah memberikan pengaruh terhadap maraknya pernikahan dini karena dispensasi nikah Memberikan izin untuk menikahkan seseorang di bawah usia pernikahan yang ditetapkan secara hukum, bisa membuat orang tua atau wali merasa bahwa mereka memiliki legitimasi hukum untuk melangsungkan pernikahan anak mereka meskipun masih di bawah usia yang disarankan.

Kata-kata kunci: dispensasi nikah, pernikahan dini, UU Perkawinan

A. INTRODUCTION

Marriage is a Sunatullah that binds the minds of a man and a woman marked by a contract, which generally comes from different families, especially from their families of origin, who then bind themselves into one unit in the bonds of family. The family as the smallest institution in a society plays an important role in the formation of a quality young generation. Marriage is intended to achieve happiness and tranquility in human life, through the door of marriage a man and a woman can fulfill their biological needs, while syar'i through the command of Allah SWT, marriage shows how great His affection is for humans and how vast Allah Swt's knowledge of human needs is, (Sri Ahyani, 2016).

Humans who are born with the potential for lust for the opposite sex need a means to channel this potential, if this potential is not channeled in a directed manner, it will cause various insecurities. Marriage is also a contract or engagement to legalize sexual relations between men and women in order to realize the happiness of family life which is filled with a sense of tranquility and affection in a way that is approved by Allah Swt.

The Qur'an does not specifically discuss the age of marriage, only stipulates it with signs and signals, so it is left to the realm of fiqh and to Muslims to determine the best age limit in accordance with the conditions and signs that have been determined, and adjusted to the place where the law will be enacted. Likewise, in customary law there is no age limit for marriage, but usually the maturi-

ty of a person in customary law is measured by signs of body parts, if the girl has menstruated (menstruation), the breasts have protruded, it means that she is an adult. For men, the measure is seen from changes in voice, posture and already emitting semen or already having sexual appetite. (Sri Ahyani, 2016). As in QS. An-Nur/26: 32.

وَأَنكِحُوا الْأَيْمَىٰ مِنكُمُ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِن فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Translation:

"Marry off those who are celibate among you and those who are marriageable among your bond-servants, both men and women. If they are poor, Allah will enable them by His bounty. Allah is All-Wise, and All-Knowing. (Kementeriaan Agama RI, 2015).

For a young man, the age to enter the gates of marriage and married life is generally focused on the physical maturity and maturity of the person's mind and his ability to take responsibility as a husband in his household, it is a benchmark age for young people unless there are other factors that cause marriage to be carried out earlier, for a girl the age of marriage is because it is related to pregnancy and it is likely that after the marriage will occur pregnancy.

B. LITERATURE REVIEW

Based on my in-depth experience, I think that so far I have not found any studies specifically on "The Effect of Marriage Dispensation on the Rise of Early Marriage in Bola District, Wajo Regency".

In writing this thesis, the writer examines and looks at several previous literary studies that have relevance to this research, including:

1. Ummu Kalsum hp, *"Pengaruh Dispensasi Nikah Terhadap Tingkat Perceraian Di Pengadilan Agama Watampone Kelas I)* A. This thesis has relevance to the researcher's thesis, which discusses the factors that cause the granting of marriage dispensation by the judge, namely due to the consideration that it is in accordance with the formal requirements, the domicile is included in the jurisdiction of the Religious Court itself, there are no restrictions on marriage, it is mature in terms of attitude, physical, and financial, there is no coercion from any party to get married, the marriage to be carried out is really urgent, and the consideration of masalah mursalah. However, what distinguishes it is that the researcher's thesis discusses the factors

that cause the granting of the application for marriage dispensation in the court of law, the effect of marriage dispensation on the prevalence of early marriage in the sub-district of Bola, Wajo Regency, and the phenomenon of early marriage in the sub-district of Bola, Wajo Regency.

2. Nurul Azizah, "*Studi Kasus Tentang Penolakan Dispensasi Kawin Pada Perkara 106/Pdt.P/2020 Di Pengadilan Agama Bangkinang Kelas I*". This thesis has relevance to the researcher's thesis, which discusses early marriage, which is basically not available because in the law of marriage in Islam, there is no age limit, But what is the problem of early marriage according to Islamic law is the law on marrying children who are still immature or young. In Islam, marriage is something that is very sacred and it is a sacred covenant before Allah. However, what distinguishes it is that the researcher's thesis discusses the effect of marriage compensation on the prevalence of early marriages in the sub-district of Bola, Lombok district, and the phenomenon of late marriages in the sub-district of Bola, Lombok district.

C. METHOD

The author uses several methods of research in completing the thesis, as follows:

1. Type of Research

In the preparation of the line thesis, the compiler uses the qualitative research type, because the data collected is descriptive, that is, the research intended to provide the most accurate data possible about people, conditions or other phenomena. (Soerjono Soekanto, 1994).

2. Method of research

- a. The normative approach is the point of view of Islamic law and the law of the land on matters relating to Marriage Dispensation against the rise of early marriage.
- b. The juridical approach is that the research is based on all the laws and regulations that apply in Indonesia, especially the marriage dispensation against the rise of early marriage.
- c. The sociological approach is an approach that concerns the attitudes and thoughts of the community towards the marriage dispensation and the prevalence of early marriage.

3. Method of collecting data

The author has used several methods in data collection, as follows:

- a. Library research is carried out by reading books or magazines and other sources that have something to do with the problem being discussed. (Muhibbi Syah, 2000). In this library research, the author follows two methods, namely:
 1. A direct quotation is where the author quotes from a book or magazine without changing the action at all.
 2. Indirect quotation where the author quotes the book by adding his own words but the meaning and purpose remain the same.
- b. Field research is the method of research used to obtain data in the field by going into the field or visiting the object that is the target of the research. (Pusat pengkajian Islam dan Masyarakat, 2001).
 1. Observation

Observation is the observation or recording in a systematic manner of the elements that appear in a symptom in the object of research. (Arifudin, 2009). In this case, the author conducts an observation of the community about the influence of marriage dispensation on the prevalence of early marriage in Wajo district, Bola sub-district.
 2. Interview

Interview is the collection of data by asking questions directly by the interviewer to the interviewee who is being recorded. (Irwan Soerhartono, 1995). In this research, the author uses the free-lead interview type. This means that the author is free to ask the main questions according to the situation and conditions of the interviewee, but still sticks to the list of questions that have been made by Ardianto, in the data collection instrument.
 3. Documentation

Documentation is one of the data collection techniques used in social research methodologies to trace historical data. Most of the data available is in the form of letters, diaries, memorabilia and reports. (Elvinaro Adianto, 2010).

D. RESULT AND DISCUSSION

Marriage dispensation consists of two words, namely dispensation and marriage. Dispensation in the Indonesian dictionary has two meanings; the first is, exemption from a rule due to special considerations; exemption from an obligation or prohibition. The second is an exemption from action based on a law which states that a law

or regulation does not apply to a specific matter. According to the Law Dictionary, dispensation means an exception to the law.

Marriage dispensations are granted on the basis of considering the good of the law when there is a purpose that can truly be expected to serve the purpose of marriage. *Maslahah mursalah* is a good that is not mentioned by *Shara'* in doing it or leaving it. In the case of laws, doing it will bring benefits and the aim is to avoid harm. The granting of dispensation is in order to realize the good and avoid the greater evil by relying on the methods of *maslah mursalah* and *sadz adz-dzariah*.

Marriage dispensation is granted on the basis of considering the welfare of the law when there is a purpose that can truly be expected to convey the purpose of marriage. *Maslahah mursalah* is a good that is not mentioned by *Shara'* in doing it or leaving it. In the case of a law, doing it will bring benefit and the aim is to avoid harm. The granting of dispensation is in order to realize the benefit and avoid the greater harm by relying on the method of *maslah mursalah* and *sadz adz-dzariah*. (Fitriani, 2022).

Dispensation is an exception to the provisions of laws or regulations which should apply formally. Marriage dispensation is an exception to the provisions of Article 7 paragraph 1 of Law No. 1 of 1974 concerning the minimum age for marriage for a bride and groom who have not reached the minimum age for marriage due to certain circumstances. (Fitriani, 2022).

Dispensation is the granting of the right to a person to marry even though they have not reached the minimum age of marriage. That is, a person may marry outside the provisions of the legislation, if and only if the circumstances require it and there is no other alternative (*ultimum remedium*). Because the meaning of dispensation of marriage is the granting of permission to marry by the Court to a husband or wife who is not yet 19 years old to enter into marriage. (Fitriani, 2022).

The issue of marriage dispensation is a solution that is given to married couples who have not met the age requirement for marriage, but it became more of an issue when the age limit for marriage underwent changes towards the end of the 2014-2019 term of office of the members of the House of Representatives (DPRD). That is, Law Number 1 of 1974 on Marriage was amended through Law Number 16 of 2019 on the Amendment of Law Number 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law), and came into force on October 15, 2019. Unlike other bills, the

amendment to the Marriage Law has received almost no attention. The substance of the amendment is only about the age of marriage. In fact, it is on the issue of marriage which has already been decided by the Constitutional Court. (Fitriani, 2022).

The new Marriage Law also contains a regulation on marriage dispensation, which is different in form from Law Number 1 of 1974. Dispensation marriage is an exception in the case of a marriage in which both or one of the candidates are the bride and groom. Either a man or a woman who is still under the age of 18 and is allowed to enter into a marriage with the conditions that have been determined in accordance with the Marriage Dispensation procedure. The procedure is as follows.

- a. Both parents (father and mother) of the bride and groom, who are still under the age of majority, respectively as applicant 1, and applicant 2, submit a written application to the Religious Court.
- b. The application shall be submitted to the Religious Court in the place of residence of the applicant.
- c. The application must contain:
- d. Identity of the parties
- e. Posita (reasons or evidence on which the application is based, as well as the identity of the male/female bride and groom)
- f. Petitum, (the thing that is requested to be decided in court). (Ummul Kalsum, 2017).

Definition of Early Marriage

The Big Indonesian Dictionary (KBBI) defines marriage as an agreement between two people, a woman and a man, who want to become official and legal. Marriage can take place if there is consent from both parties, which is shown by their maturity and readiness to build a household. The maturity and readiness is proven by the minimum age at which a person is allowed to enter into a marriage as regulated in the law (Inayah, 2010).

Marriage in language; al-jam'u and al-dhamu which means gathering. While the meaning of marriage (awaj) is usually interpreted (wath "u alzaulah) means having sexual intercourse. Marriage also means to crush, crush or gather. As for the figurative meaning, watha" which means intercourse or lakad, means entering into an agreement. Almost the same definition was also put forward by Rahman Hakim, that the word marriage comes from the Arabic nikahun which is masdar or the origin of the word from the verb

nakaha, its synonym tazawwaja is then translated in Indonesian as marriage. (Faida Hilyasani, 2022).

The meaning of marriage according to religion is a very strong contract or bond in which there is ijab (a statement of submission by the woman's guardian) and kabul (a statement of acceptance from the man), which is carried out to obey the commandments of Allah, where this marriage is a form of worship and aims to realize happiness and prosperity in a family life that is sakinah, mawaddah, and warahmah. (Faida Hilyasani, 2022).

In line with the definition above, marriage according to Islamic law is regulated in Article 2 of the Compilation of Islamic Law which reads: "Marriage according to Islamic law is marriage, which is a very strong contract or mitsaaqon ghalidzan to obey the commandments of Allah and its fulfillment is an act of worship. " Whereas according to Indonesian law, marriage is not only related to the persons involved (husband and wife), but also for the benefit of the entire family of both parties and at the same time is also a kinship or neighborly bond. (Kompilasi Hukum Islam, 2020).

In general, the conditions of marriage can be detailed as follows:

- a. It must be based on the consent of the bride and groom, in order to avoid coercion on the part of the bride and groom in choosing a husband or wife (pasal 6 ayat 1 of the Law on Marriage).
- b. The prospective bridegroom has reached the age of 19 (nineteen) years, while the prospective bride has reached the age of 19 (nineteen) years. (pasal 7 ayat 1 of the Marriage Law).
- c. Obtain the permission of both parents, for a bride and groom who have not yet reached the age of 21 years. If the parents are unable to do so, the permission may be granted by another party. (pasal 6 ayat 2 to 5 of the Law on Marriage).
- d. There is no prohibition between the two candidates for marriage.
- e. Each of the bride and groom shall not be bound by marriage, except for the bride and groom and shall obtain permission from the court (pasal 9 of the Marriage Law).
- f. There shall not be two divorces between the two candidates, except where the laws of their respective religions provide otherwise. (pasal 10 of the Marriage Law).
- g. Has been released from her marriage period or waiting period due to the termination of her marriage. (pasal 11 of the Marriage Law). (Muhammad Adim Almustofa, 2022).

The pillars of marriage are:

- a. The bridegroom.
- b. The bride.
- c. The guardian.
- d. Two witnesses.
- e. Shigat ijab kabul.

Meanwhile, the Jumhur Ulama agree that the pillars of marriage consist of the following:

- a. The existence of a husband and wife who will enter into a marriage.
- b. The existence of a guardian on the part of the bride-to-be.
- c. The presence of two witnesses.
- d. Sighat of the marriage contract.

Imam Malik in his book Abdur Rahman Ghazali states that the pillars of marriage are five kinds, namely:

- a. Guardian of a woman.
- b. Mahar (Masnikah).
- c. The groom-to-be.
- d. The bride-to-be.
- e. Sighat of the marriage contract.

Imam Shafi'i believes that the pillars of marriage are five types, namely:

- a. The prospective bride and groom.
- b. The bride-to-be.
- c. The guardian.
- d. Two witnesses.
- e. Sighat of the marriage contract. (Muhammad Adim Almustofa, 2022).

Early marriage is a marriage in which the candidate for marriage or the candidate for husband or both are still children under the age limit of marriage according to Law No. 1 of 1974 on Marriage, which is 19 years old for women and 19 years old for men. Whereas in Islam there is no list of marriage dispensations. The scholars only mention the age of puberty and do not specify the minimum age of marriage so that it can be called early marriage. (Muhammad Adim Almustofa, 2022).

Drs. Rizal Pasim M.H He argues that early marriage or early marriage in the court of law is usually called dispensation of marriage, which happens because of the free association where the parents are not in a position to supervise the children's socialization and environment. So that there is a violation of religious norms,

which makes children have relationships between members of the opposite sex, which they should not do. The local norms themselves also prohibit the practice of marital relations before marriage. (Faida Hilyasani, 2022).

E. CONCLUSION

1. Based on the results of the research, the researcher found that underage marriage is still prevalent especially in the sub-district of Bola. Early marriages from the last 2 years of the line according to the data obtained from the Office of Religious Affairs in the sub-district of Bola always experienced an increase, in 2021 out of 65 couples who got married, among them there were 35 people who registered to go through the marriage dispensation route, in 2022 there were 45 people out of 70 couples who got married.
2. Marriage dispensation has an impact on the prevalence of early marriages because it gives permission to marry off a person under the age of marriage that is legally prescribed, can make parents or guardians feel that they have legal legitimacy to marry their children even though they are still under the legal age of marriage. The early marriages that occur are not only due to the availability of dispensation for early marriages, but most of them are not recorded at the KUA due to fear, so they are determined to marry their children simply and even just get married softly.

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